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UNITED STATES OF AMERICA.

Rhode Island. Supreme judicial cou

CHARGE

OF THE

HON. CHIEF JUSTICE DURFEE,

DELIVERED TO THE GRAND JURY AT THE MARCH TERM OF THE SUPREME JUDICIAL COURT, AT BRISTOL, RHODE-ISLAND, A. D. 1842.

PUBLISHED AGREEABLY TO THE FOLLOWING REQUEST:

Grand Jury Room, March 15, 1842.

The Grand Jurors respectfully tender to the Hon. Supreme Judicial Court their thanks for the learned and appropriate charge delivered to the Grand Jury, this morning, by Mr. Chief Justice Durfee. Relating, as it does, to a subject upon which there is much diversity of opinion, but which all admit to be of momentous interest, the jurors think its publication would be useful at the present time, and do request a copy for the press.

Henry D'Wolf,	Thomas Wilson,
Howland Smith,	John J. Allin,
Samuel Sparks,	Jonathan Martin, 2d.,
William H. West,	Ebenezer Grant,
S. T. Church,	Ira B. Kent.
Robert S. Watson,	

Gentlemen of the Grand Jury:

It is made our duty. by statute, to instruct you in the law relating to crimes and offences cognizable by this court, by giving you publicly in charge our opinion thereon. We are not at liberty to forego this duty, from any feelings of delicacy towards others, or for any considerations of a personal nature. A court is but the organ of the law, and when it speaks, it should announce what the law is, "without fear, favor, affection, or hope of reward." I use the language of the oath which you have just taken, gentlemen; for that oath does as truly express our obligations as a court, as it does yours as a jury.

The first duty which every person residing within the jurisdiction of this State owes to it, is that of allegiance. It begins with life—with infancy at the mother's breast, and if he continue an inhabitant or citizen of the State, it terminates only with the last breath which delivers the spirit over to its

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final account. Allegiance is a duty due on an implied contract—often, however, sanctioned by an oath, but none the less sacred, in the absence of the oath—that so long as any one receives protection from the State, so long will he demean himself faithfully and support the State. All persons, therefore, abiding within this State, and deriving protection from its laws, owe this allegiance to it, and all persons passing through it, or visiting, or making temporary stay therein, owe, for the time, allegiance to this State. One of the highest crimes of which a human being can be guilty, is treason; and treason necessarily involves a breach of allegiance.

From the following resolutions, and the matters to which they relate, there seems to be a peculiar necessity for my calling your attention to this subject, at this time; for, as a court, it is not only our duty to try offences when committed, but to prevent them, if it can be done, by making the law known.

Those resolutions are in these words:

"State of Rhode-Island and Providence Plantations.

In General Assembly, January Session, A. D. 1842.

Whereas a portion of the people of this State, without the forms of law, have undertaken to form and establish a constitution of government for the people of this State, and have declared such Constitution to be the supreme law, and have communicated such Constitution unto this General Assembly; and whereas many of the good people of this State are in danger of being misled by these informal proceedings, therefore,

It is hereby resolved by this General Assembly, That all acts done by the persons aforesaid, for the purpose of imposing upon this State a Constitution, are an assumption of the powers of government, in violation of the rights of the existing government, and of the rights of the people at large.

Resolved, That the Convention called and organized, in pursuance of an act of this General Assembly, for the purpose of forming a Constitution to be submitted to the people of this State, is the only body which we can recognize as authorized to form such a Constitution; and to this Constitution the whole people have a right to look, and we are assured they will not look in vain, for such a form of government as will promote their peace, security and happiness.

Resolved, That this General Assembly will maintain its own proper authority, and protect and defend the legal and constitutional rights of the people.

True copy:—*Witness*,

HENRY BOWEN, *Sec'ry.*"

Gentlemen, whatever I shall say to you touching these resolutions, and the proceedings to which they refer, shall be said with the full and entire concurrence of each member of this court. And it is peculiarly appropriate, in a case like this, that it should be known what the opinion of this court is, so that no man may become implicated in any offence against the State, without a full knowledge of the opinion of this court, as an independent branch of the government, in relation to the nature of the offence and the law which it violates.

I therefore say to you, that, in the opinion of this court, such a movement as that described in these resolutions, is a movement which can find no justification in law; that if it be a movement against no law in particular, it is, nevertheless, a movement against all law; that it is not a mere movement for a change of rulers, or for a legal reform in government, but a movement which, if carried to its consequences, will terminate the existence of the State itself as one of the States of this Union. I will now give our reasons for this opinion.

But, gentlemen, in addressing you upon this subject, I know not but that I am addressing those who have participated in this movement. If this be the case, I beg you and all others with whom you may have acted, to distinctly understand me. Whatever language I may use to characterize the movement, it shall be but the language of the law; it shall mean no impeachment of your or their motives. I will concede to you and to them, if you choose, motives as pure and patriotic, legal attainments and talents as high, as those of the purest and greatest minds that this State ever produced; and still I say, with all proper deference to you and them, that you have mistaken your duties and misunderstood your rights. Deem it not strange that calm lookers on can see where the error lies, better than those who are engaged in the heat of the movement. When great masses move, they move under the influence of excited feelings. When the object is to attain some great political good, real or supposed, the excitement takes for its law of action, some etherial abstraction, some general theoretic principle, true, perhaps, in its application to certain theoretic conditions of man, but utterly false in its application to man as he is; and endeavors, without regard to present social organizations, to carry that principle to its utmost consequences. Gentlemen, strong heads and patriotic hearts doubtless gave the first impetus to the French Revolution; but does not the progress and issue of that bloody drama tell us that those abstractions, (in which they so freely dealt,) whatever might be their theoretic truth, became false and fiendish in their application

Do we not know that the very masses which were engaged in carrying them out, rejoiced when the iron rule of military despotism came, to deliver them from themselves, and from the incarnate demons which the movement had conjured up?

Gentlemen, when all men are angels and of the same order, these abstractions may be true in all their consequences, but never in their application to man as he is.

With this explanation, I proceed to show the illegality of this movement, and the ruin that it portends. I repeat, that, however patriotic may be the intent, the legal effect of it is, the destruction of the present State, and the construction of a new State out of its ruins.

Gentlemen, what is a State? I ask not for a poetical definition, but I ask for a definition which befits a court of law, which may befit the courts of the Union in which we must be ultimately judged. Strange as it may seem, amid all the controversy which this movement has excited, I have not known this question to be asked, or a definition to be given. Such have been the jarring and confusion of the social elements, that the best minds seem to have uttered their thoughts only in fragments. What, I repeat, is a State? Think ye it is the land and water within certain geographical lines? The child may tell you so when he points at the map; but that is not the State, but only the territory over which the State has jurisdiction. Think ye it is a mere aggregate of neighborhoods within those limits? No, gentlemen, there is something wanting to give them distinctive unity. A mere proximity of habitations never made a State any more than congregated caravans of Arabs when by night they pitch their tents together in the bosom of the desert. Think ye it is the aggregate of inhabitants within such limits? Never. It would be preposterous to call a mere collection of individuals within certain limits, a state. Regarded as a mere aggregate, they are still without unity, and have nothing whereby to bind them together, and enable them to act as an organized whole. No treaty can be made with them; no law can be enacted by them. Think ye that it is the mere rulers or those who have the legislative and executive power in their hands? This, indeed, comes something nearer to our idea of a State; and when we look upon governments abroad, we may look no farther; but surely this does not make a State here at home, under the Constitution of the United States. Here we must not only find a government, but a people so bound together, colligated and organized by law, as to appoint rulers, and to reduce the innumerable wills of the multitude to a legal unit. I think I give you a true description of a State, when I say

that a State is a legally organized people, subsisting as such from generation to generation, without end, giving, through the forms of law, the wills of the many, to become one sovereign will. It is a body politic, qualified to subist by perpetual succession and accession. It is a self subsistent corporation, resting upon its own centre, and it is, under the constitution of the United States, bound, to a certain extent, in its entirety and in all its constituent individual elements, to that common central body politic, which is the corporate people of the Union or body politic of States, which ever it may be. There is, and from the nature of things, there can be no sovereign people without law; without that unity which the law gives them, whereby they are enabled to act as one; and consequently there can be no sovereign will that is not expressed through the forms of their corporate existence.

Now can there be a doubt that this is a true definition or description of a State, and that it applies to this State as one of the States of the Union? Lest there should be a lingering doubt, in some reluctant mind, I will verify this definition from the history of the State itself.

The first charter of this State was granted in 1643. It incorporated Providence, Portsmouth and Newport, under the name of the incorporation of Providence Plantations, in Narragansett Bay in New-England. Warwick was subsequently admitted. It was then that the inhabitants of this State first became a corporate people, but dependant on the mother country. In 1660 this corporate people, by their agents, petitioned their sovereign for a new charter. On this petition, the charter in our statute books was granted, and, by the same corporate people, in November, 1663, accepted as their charter or form of government. This charter declared that certain persons named therein, and such as then were, or should thereafter be made free of the company, a body corporate and politic, in fact and name, by the name of the Governor and company of Rhode-Island and Providence Plantations in New-England, in America, and by the same name that they and their successors should have perpetual succession. Now, here was a corporation, and the freemen constituting it, continued their corporate existence, subsisting by succession, still dependent upon the parent government, exercising the powers in the charter granted, holding property of all sorts as a corporate people down to the Revolution. It was then, that those aggressions and claims of the king of Great Britain, which are set forth in the declaration of independence, and which were enforced or attempted to be enforced by the bayonet, threw this corporate peo-

ple upon the natural rights of self preservation. They resisted as a corporate people. It was in the prosecution of this justifiable defence, that this corporate people found it necessary to cut the bonds which bound it to the mother country. It did so. It was its own act, performed by its delegation in Congress, by its legislative body, and by the corporate people itself in every legal form in which it could act. It was this act and this alone, that made us a self-subsistent corporation, body politic, or State. It was this people, acting in its corporate capacity, or by its members, as members, through prescribed forms, that subsequently adopted the constitution of the United States, whereby this State became a member of the Union and its citizens, citizens of the United States.

Does not the history of this State, Gentlemen, verify the definition which I have given? Is a State any thing but a self subsistent body politic and corporate, designed to continue its existence by succession and accession, through all time? If it be any thing else, I neither know nor can conceive what it is. But if it be this, whatever there is of sovereignty must be found in the body politic and corporate, and no where else.

But it has been lately said, by some whose opinions are entitled to great respect, that on the separation from the parent government, a subsequent assent of the natural people was necessary to continue the sovereign power in the corporate people, and that all right in the latter to govern, ceased and passed to the aggregate, unorganized mass of individuals.—Gentlemen, this cannot be so. The act of seperation, was the act of the corporate people, and all that was acquired by that act was acquired by the corporate, people and could be acquired by none but a corporate people. None but a corporate people has the capacity to receive and excércise sovereignty. The natural people has not the capacity to inherit, or succeed to sovereignty, though they may create it, by compact, all being parties, or by force, where there is no superior powers to impose restraint. A sovereign will is a unit, is a mere legal entity; it has no where in any civilized country any existence, independent of law. In the constitutional monarchies of Europe, it has a mere legal existence; hence the legal maxim in England, that the sovereign never dies, and can do no wrong. The moment that the sovereign will ceases to be a legal will, and becomes a mere personal will, you have nothing but a master and a body of slaves; you have no State at all, but only the semblance of one.

The soverign will is a unit. The moment you divide it, you destroy it, and could such a unit pass to thousands of individuals, isolated, independent, and bound together by no com-

mon law as the natural state supposes, and still continue to exist, as a unit, as a one, sovereign will? Never, Gentlemen; to pass it to the unorganized mass is to destroy it. And how fallacious the idea, that the sages of seventy-six annihilated, reduced to nothingness, the sovereignty of every State of this Union, in and by the very act which declared them sovereign and independent! What became of the confederation? What became of the congress that made the Declaration.

Truly, Gentlemen, some strange infatuation has seized upon the age, if we can believe, that, when the Congress of seventy-six declared these colonies, in the words of the Declaration, free and independent States, and that they had full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other things which independent States might of right do, that, at that very moment, every one of these States ceased to exist and crumbled into their natural elements. No, Gentlemen, our fathers understood themselves better than their children appear to understand them. Well may we humble ourselves in the presence of their memory, when we find such strange hallucinations seizing upon the wisest and best of us. They have made large demands upon the admiration of their children; let us take care we do not make demands, equally large, upon the pity of ours. Gentlemen, the definition is correct, it is true to history, and it is true to the Declaration of Independence, and it is true to the Constitution of the United States, which, according to its intent, this State as a corporate people, adopted by its convention.

Gentlemen, let us not deceive ourselves by the various forms which this sovereignty puts on, to carry its will into effect. The government in all is departments, legislative, executive, and judicial, is but the exterior form which this sovereignty puts on, in order to preserve itself and to exercise jurisdiction over its peculiar territory, and all persons and things within it. It is in this way that it extends protection to the whole people, and to every individual man, woman and child within its jurisdiction, and makes them all one with the corporate people, except in the mere exercise of the right of voting. I have recently heard the phrases "the legal people," "the physical people," repeated by those whose opinions are entitled to respect, as if there was a distinction between them. Gentlemen, we are all the legal people, we are all the physical people. Every man, woman and child, not of foreign birth, domiciled within this State, is a citizen of this State, and for that reason also a citizen of the United States. Every man, woman and child has the protection and benefit of all its laws, without distinction,

and for that reason, every one owes it allegiance and fidelity. No one within this jurisdiction can lawfully renounce this allegiance and transfer it to another sovereignty, whether created within this State's jurisdiction or elsewhere. For this reason, each one and all are the legal people of this State, and are so regarded both by the laws of this State and the laws of the United States. We cannot recognize the distinction as having any just foundation in fact, or law. The error lies in the misapplication of language. It is apparent that what they mean, who use the phrase "legal people," is the corporate people. By thus limiting a large and comprehensive phrase, a confusion of ideas is produced and nothing is distinctly seen. The language seems to imply, that all who are not the legal people in this limited sense, are the illegal people, or people without law and in the natural state, and entitled therefore to rely on their physical force; and this idea seems to be strengthened and confirmed by denominating them the physical people. We may all have misapplied these phrases. I myself may have misapplied them, for I make no pretensions to being better or wiser than others. But if we have misapplied them, let us misapply them no longer; let us recollect that the legal people and the physical people, are the same great whole.

But, Gentlemen, if it be true, that the corporate people be the sovereign people, and the forms of government but the instruments of its will, what follows? Why, the moment that the corporate people cease to exist as such, every thing is resolved into its natural elements. This corporate people, whilst it exists, may, of its own will and through the forms of law, which it prescribes by its legislature, put on as many different forms of government, not conflicting with the Constitution of the Union, as it chooses. Its power, for that purpose, is ample, unquestionable. It may change its form as thoroughly and as often as the fabled Protens; it may extend the right of suffrage to every man, woman and child, and still remain the same legal entity, the same State. But the moment the corporate people of Rhode Island cease to exist as such, whether by force, fraud or voluntary death, corporate Rhode-Island herself ceases to exist, the State is gone. Yes, one of the good old thirteen is gone forever. You may close the grave upon her, you may write "*hic jacet*" upon her tomb, she lives only in history.

It may be asked whether the natural people have not their natural rights, and whether one of these is not the right of establishing a government of their own. I answer, that if we grant you, that the people have a right to violate their allegiance, resolve themselves into the supposed natural condition

of man, and to establish a new State and government, and, if we ever admit that it has already in this particular instance been done, it does not at all relieve us, under the Constitution of the United States, from the appalling fact that the old State has ceased to exist, and that the new State is not a member of this Union. We, as the natural people, have accomplished a revolution in which we have originated a new sovereignty, which utterly disclaims all connexion with that corporate Rhode Island which uttered the declaration of independence and adopted the Constitution; and how can we claim to take her place? how can we, as citizens of such a State, be citizens of the United States?

I have heard much, of late, about the right of revolution, and there is no doubt but that in those cases where a people, by the oppression and violence of their rulers, are thrown upon the natural right of self preservation, this right exists, may be exercised, and a revolution be justified; but however justifiable it may be, we should always recollect that if it be revolution, it *is* revolution, and nothing but revolution. There is no possibility of making it half revolution and half not. If you resort to revolution you must adopt it, with all its consequences, be they never so calamitous. These calculations are to be made at the commencement of it, and weighed against the evils which it is proposed to remedy.

Thus, gentlemen, if every thing be conceded that we can ask for, if it be conceded that we have quietly put down the present corporate Rhode Island, and that we have succeeded in establishing this earth-born prodigy in her place, what have we done but broken our allegiance to our legitimate State, broken our allegiance to the United States, and accomplished our complete outlawry from the Union!

But perhaps we may hope that the general government will, without enquiry whether we be or be not the legitimate State, recognize the government in fact, (in legal phrase *de facto*,) as the State. I am apprehensive that in this hope we shall be disappointed, such a recognition would present a question of constitutional law affecting every State in the union. This could not be avoided: but if it could, it would still present a question of policy equally certain to be decided against us. True it is that the government of the United States does recognise the government de facto of a foreign country as the legitimate government or State. And it does so from policy. The government of the union, having no fundamental principle in common with the monarchies of Europe, and in its anxi-

ety to avoid an embroilment in their concerns, recognises those as the government of any country who exercise the powers of government, without questioning the legitimacy of their claims. But how is it with the monarchies of Europe among themselves! what is necessarily their policy? Why, whenever a revolution is effected in any one of them upon principles which endanger their ideas of legitimacy or the permanence of their institutions, millions of swords at once leap from their scabbards, cities are wrapped in flames, fields are deluged with blood and heaped with slaughtered thousands. Think you that it was out of compassion to an exiled Bourbon, that Europe consumed one whole generation in blood and carnage? No, Gentlemen, the struggle commenced, with sustaining their ideas of legitimacy, in which every monarchy of Europe was interested, and terminated in their triumph.

And how much more deeply interested will every State in this union be, all subject as we are to the same common Constitution and government, in a question of State legitimacy? For what is the principle to be established by the recognition of the new government as the State? It presents itself in these facts. A portion of the people of this State, claimed a further extension of suffrage, and an equalization of representation for the benefit of several towns. This, the legislature did not grant at their request, but called a convention with a view of establishing a Constitution which might meet every reasonable demand. This, I believe to be about the extent of our grievance. And now, before that convention had accomplished their task, we, backed by the physical force of numbers, take the powers of government into our own hands, frame a Constitution, declare it to be the supreme law of the land, and overturn, not merely the government of the State, but the State itself. Now, as a mere matter of policy, could the delegations of the several States in congress establish the principle, that because of such a grievance, mere numbers are above law and have a right to overturn the State of which they are citizens? Let us try to call this a grievance, and then how many thousand grievances are there of greater magnitude in every State, and if they are to be in this way redressed, the stability of our institutions is at an end. Have we no questions touching domestic servitude? None touching the social relations? None touching the most active and powerful of all principles, conscience and religious faith? May not protestantism, in a moment of infatuation and alarm, in this manner establish itself as the religion of the State? May not Romanism then rally, put down protestantism, and establishing itself in turn, nail the cross

to every steeple, place a priest at every altar, and a teacher in every school, and compel us to support all by taxes? May not the unequal distribution of property in some States be found a grievance? May not banks in others become obnoxious? May not certain forms of taxation become odious? May not the debts of the State bear heavily? Let this principle of revolution, by an unauthorized and irresponsible movement of masses, become an element of the constitution of the Union, and any State may be overthrown, upon any pretext or petty grievance, real or supposed. And can any one believe that from policy the government of the Union would recognise such a principle? Never—gentlemen—never—until that government, desirous of bringing about a consolidation of these States, chooses to put every element of disorganization into operation upon them.

But if the new government cannot be recognised from policy, the next question is, can it be recognized on legal and constitutional principles? What says the Constitution? "New States may be admitted by Congress into this Union, but no new State shall be formed or erected within the jurisdiction of any other State, without the consent of the Legislatures of the States concerned as well as of the Congress." Is it said that this provision contemplates a case where only a part of the State's territorial jurisdiction may be occupied by the newly formed State? Very probably the framers of the Constitution had such a case in mind, but so much the worse for the case in hand. Does not an article which forbids any part of a State's territory being so appropriated, for a stronger reason forbid the occupation of the whole, and the absolute destruction of the legitimate State? Can you take the whole without its parts? Gentleman, it will not be respectful to your good sound common sense to spend a moment's time on this point.

Again, by an express provision of the same Constitution, almost immediately following the above, and to be considered in connexion with it,—the United States are bound to guaranty to every State in this Union, a government, and a republican form of government. Will this guaranty be fulfilled by suffering this Government be to annihilated, and annihilated by a power which, by the very terms of the article first above mentioned, can no more be recognised as corporate Rhode-Island than Texas or Algiers.

Tell us not of the admission of Michigan. Michigan was a territory. No pre-existent State was subverted,—we know of nothing in the Constitution that forbids Congress bestowing upon any territory that State form of government which is

guaranteed to every State, and which, if reduced by this movement to the condition of a territory, it may be our humiliating lot in some way to receive at their hands.

But, gentlemen, Congress is not the only tribunal before which we shall have to appear. It is the peculiar province of the Supreme Court of the United States, to decide in the end all constitutional questions, and questions touching State rights. I will, therefore, state to you what must, necessarily, according to the common course of judicial proceedings, be the process by which this question will be determined in the courts of the Union. When the existence of a State has been constitutionally recognised, the courts of the United States may well recognise the government de facto as the government de jure, in other words the government in fact as the government in law. They may well enough presume, that those who exercise the powers of the State are the legal officers of the State, and leave the question of the legality of the election to be settled by the State functionaries appointed to that special duty; but before there can be any such presumption, there must be a State—a State known to the Constitution and laws of the Union. There is no such thing as presuming the existence of such a State. A de facto State is as truly as a de facto corporation, an absurdity in terms. A State must have its fundamental laws or constitution known to the Constitution of the Union of which it is a member, and in accordance with it, and to talk of a de facto law is to talk profound nonsense.

To prove then the existence of the new State, or even to prove the existence of any of its officers, you must present to the supreme court of the Union this instrument which has been proclaimed as the supreme law of this State, and you must shew that it had a legal origin.

The question will not be who voted for it, or how many, but what right any body had to vote for it at all as the supreme law of Rhode Island.

In the records of the true constitutional State of Rhode Island, you can nowhere find any law, any authority countenancing such a proceeding.

This the friends of the supposed Constitution must themselves confess. Indeed they must boldly avow, that it was not only voted for without any such authority, but against the whole body of the legislation of the State, whose fundamental laws have all been recognised directly or impliedly by the constituted authorities of the Union, and by the very court that will be called upon to decide this question. And can we think

that this court will lose its firmness, and tread back its steps, on account of the delusion of some ten or fifteen thousand persons in this State, and establish a constitutional principle of disorganization, which must eventually become predominant in every State, and reduce all to ruin? It is folly to anticipate such a decision, and wickedness to hope for it.

This pretended Constitution then does not spring from constitutional Rhode Island—from that Rhode Island known to the Constitution of the United States as the State of Rhode Island and Providence Plantations; it is without legal authority, and of no more value in the courts of the Union than so much blank parchment. You are then without a Constitution—you are without fundamental laws—you have no officers that can be recognised as officers de facto, for there are no legal and constitutional duties for them to discharge. You have no legislature—no State legislation—in one word you have no State, and are reduced to the condition of a mere territory of the Union, without the benefit of territorial laws.

Now, gentlemen, what are the consequences? it is well worth while to enquire.—We stand upon the brink of an awful gulf. We are about to take the leap, and we may well feel some anxiety to look down into it, and obtain a glimpse of what sort of a Tartarus it is into which we are about to make the final plunge.

Gentlemen, I will whisper a few qestions to you, all of which, I dare not, for the peace of this State, answer even in a whisper. There is too much combustible material in this wide-spread union—too many daring and reckless adventurers of all sorts. Gentlemen—it is the faith of the untutored savage, that certain birds of the air, and beasts of the desert, are endowed with something like a prescience or foreknowledge of the coming banquet which human strife is to provide, and, that some days in anticipation of the event, they come from all quarters of the heavens, and from all the far depths of the forest, and congregating in the neighborhood of the appointed place, eagerly await the approaching carnage. I do not want to be heard or understood by such as these. Therefore, will I not answer all the questions that I may put, but simply shew you that there are such questions.

When corporate Rhode-Island ceases to exist, what becomes of her delegation in Congress?

What becomes of her bill in chancery which she filed, claiming through her charter, and through that only, a portion of territory within the jurisdictional lines of Massachusetts? I mention this not for its importance, but for its illustration, and

because in the event supposed the question must necessarily arise. What becomes of the public property of all sorts? Your court houses? Your jails? Your public Records? Public Treasury, bonds and securities of all sorts, which belong to the present corporate Rhode-Island and to her only, and can pass from her only by her Legislative consent? What becomes of the actions now pending on the dockets of every court in this State—bills of indictment for crimes committed or that may be committed? What becomes of your State Prison, and your convicts, from the wilful murderer to the petty thief? What becomes of your corporations of all sorts? Of your corporate towns and their records? Nay, are there not questions touching life, liberty and individual property? I dare go no farther; perhaps I have already gone too far. But whatever answer may be given to these questions, (and answered they must ultimately be in the Supreme Court of the Union) the bare fact that these questions must be raised, tried and decided, is sufficient to send a thrill of horror through the heart of every man, woman, and child in this State.

And all this for what? For if revolutions may be justified, we may well put the question. It is said to be for an extension of suffrage and an equalization of representation. How many of you have ever felt the want of this to be so great as even to sign a petition to the General Assembly on the subject? If this be a grievance at all, is it not the merest trifle compared with the calamities through which we must pass, in order to redress it in the mode which this movement has proposed? If it be a grievance, it has scarcely been felt, and a legal, and legitimate remedy is already before you from the State's convention. Is there any other? Did we ever petition this government for any favor which reasonable men might ask for, no matter what party was in power, that was not cheerfully granted? Are we overtaxed by this State? Is there any oppression which can be named to justify a revolution? Have not we and our fathers all lived in peace and happiness under the laws of this State, from its first establishment to the present day? Did not our fathers establish themselves here in a howling wilderness and under the protection of that distinctive principle of their government, religious liberty, enjoy peace and quiet and happiness, whilst the sister colonies were shedding blood, and persecuting their fellow men for conscience sake? Did they not, under this State and for this State, utter the declaration of independence, and led on by her Greenes and Olneys, go forth in array of battle and shed their blood on a hundred fields? Did they not gloriously and triumphantly se-

cure to us the rights which we ever since have and now enjoy under the protecting laws of this State? But they have done their work—they have passed through the toils and sufferings of their day, and laid them down in the quiet grave where the wicked cease from troubling, and the weary are at rest. They have left the fruits of their labors as an inheritance to us. May their sainted spirits join with us in a prayer to the Almighty Father of all spirits, to save us from this fatal delusion!

Gentlemen, the meaning of the word *revolution* in this case is very different from its meaning, when it designates the conflict between the colonies and the mother country. That was a conflict between corporate bodies on this side of the Atlantic against corporate Britain on the other. But revolution in this case means a conflict among the very elements of society. It proposes to realize, here in Rhode-Island, the horrors of the French Revolution. It proposes to arm neighbor against neighbor, friend against friend, brother against brother, father against son, and son against father,—and all this for what? can any one tell us?

We may flatter ourselves that we are a people too enlightened and too good to pass into the excesses which have marked revolutions in every age; but, gentlemen, in all ages of the world, and in all countries,excited passion, in its extremes, is the same—the individual man, however enlightened and good he may be, as an individual, is merged in the mass to which he belongs, he loses his freedom, he blends with it, whilst the mass itself becomes a mere brute force, which, under the influence of the idea or passion which actuates it, goes on and on—heedless of the ruin which it makes, heedless of its own destiny, to its final dissolution or utter annihilation. Would to God, that men would learn something from history! But it has been well observed, that we ever place the lantern in the stern, and not at the prow. It sheds its light only on the tumultuous billows of the past. We there see the wrecks of nations that have committed themselves to anarchy, tossing and heaving on the stormy surge. Yet on we go, exulting in our superiority over our predecessors, heedless of the rocks beneath the bow, until the billow on which we are borne sinks beneath us and dashes us into fragments.

It may be thought that I am indulging in feelings not usual to the Bench; but, gentlemen, there are occasions when humanity may be excused for raising above the petty etiquette of official dignity, when the formalities of the judge may be lost in the realities of the man. And if ever such an occasion pre-

sented itself in any State, it now presents itself in this. It would be our duty, as good citizens, but it is imperiously our duty, as sworn conservators of the peace, to tell you what is law, and what is not law. This duty we are not at liberty to forego.

I therefore say to you, and all others duly qualified, that it will be lawful for you to vote on the Constitution now submitted to you by the State's Convention, and that if it be adopted, any person in this State, commits a breach of allegiance who wilfully fails to support it. If it be not adopted, it will be our duty still to adhere to that compact of our ancestors called the Charter, as that sheet anchor at which our beloved State has triumphantly ridden out many a storm, and can as triumphantly ride out this. And as to that instrument, called "the Peoples Constitution," however perfect it may be in itself, and however strong may be the expression of public opinion in its favor—yet, standing as it does, alone and without any legal authority to support it, it is not the supreme law of this State; and those who may attempt to carry it into effect by force of arms, will, in the opinion of this court, commit treason —treason against the State—treason perhaps against the United States—for it will be an attempt by the overt act of levying war, to subvert a State, which is an integral part of the Union; and to levy war against one State, to that end, we are apprehensive will amount to the levying of war against all.

Gentlemen, do not misapprehend us,—we make not this declaration by way of denunciation or threat, but simply because it is our duty to declare the law. As a court of law, were it even in our power, we would not act on any man's fear, save on that fear of which every good citizen may be proud,—the fear of doing a wrong or illegal act. And we make this declaration with the hope that those gentlemen who have engaged in this movement—for many of whom a personal acquaintance enables us to cherish sincere respect and esteem —will be induced to pause and to reflect,—to reflect deeply.— We admit their courage, but may they use it in a good cause, and without following the example, adopt the sentiment of Macbeth, when urged to commit treason and murder—

> *"I dare do all that may become a man;*
> *Who dares do more, is none."*

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